

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,
Plaintiff,

vs.

No. CR 10-773 JB

JOHN LEONARD TSOSIE,
Defendant.

**NOTICE OF INTENT TO INTRODUCE EXPERT
WITNESS TESTIMONY PURSUANT TO RULES 702, 703 AND 705**

COMES NOW undersigned counsel, Samuel L. Winder, court appointed counsel for defendant, John Leonard Tsosie, and gives notice to the United States of America, under Rule 16 of the Federal Rules of Criminal Procedure and Rules 702, 703, and 705 of the Federal Rules of Evidence, that it intends to offer expert testimony in its case-in-chief. The expert that Mr. Tsosie may call, and his anticipated testimony, is set forth below.

1. Dr. Edward Reyes is a well qualified pharmacologist. Dr. Reyes has a Ph.D. in Pharmacology and is a Professor Emeritus – Biochemistry and Molecular Biology at the University of New Mexico, School of Medicine. Dr. Reyes' curriculum vitae (CV) will be provided to the United States by first-class mail. Due to the length of Dr. Reyes' CV it could not be attached to this Notice of Intent. Accordingly, a copy of Dr. Reyes' CV will be hand-delivered to this Court. Mr. Tsosie anticipates that Dr. Reyes will testify in Mr. Tsosie's case-in-chief and that he will opine, *inter alia*, that Mr. Tsosie's BAC/BrAC was between .07 and .08 g/100ml at the time of the collision.

2. Dr. Reyes may also testify to certain hypothetical questions presented to him by counsel. Hypothetical questions are permissible under Fed.R.Evid. 703. *See Atwood*

v. Union Pacific Railroad Company, 933 F.2d, 1019 (10th Cir. 1991) (*citing Teen-Ed, Inc. v. Kimball Int'l*, 620 F.2d 399, 404 (3d Cir. 1980)).

3. Dr. Reyes may also refute the expert testimony of Ms. Nancy Drez. In the United States' Notice of Intent, the United States sets forth that Ms. Drez will "opine regarding what range of alcohol levels *were likely sustained* by the defendant at the time of the collision." (emphasis added). Specifically, the United States set forth that "the defendant's BAC/BrAC was between .07 and .13 g/100ml at the time of the collision, depending on the time of the blood draw." Dr. Reyes will set forth testimony with regard to Ms. Drez's conclusions regarding Mr. Tsosie's BAC/BrAC was at the time of the collision.

Respectfully submitted,

By: _____-s-_____
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I hereby certify that on April 12, 2011
I filed the foregoing electronically through CM/ECF
System, which caused Counsel for the Government
Kyle T. Nayback, to be served by Electronic means, as
more fully reflected in the Notice of Electronic Filing.

Samuel Winder-s-electronically filed
Samuel L. Winder

